No. 46740-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KATRINA L. BEARDSLEE,

Appellant,

v.

STEVEN F. BEARDSLEE,

Respondent.

BRIEF OF RESPONDENT

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I. COUNTERSTATMENT OF THE CASE

RAP 10.3(a)(4) states that a brief should contain "a fair statement of the facts and procedure relevant to the issues presented for review, without argument.'' Respondent objects to all portions of the Statement of the Case that are contained in Brief of Appellant wherein the citations are made to Clerk's Papers as either not being supported by the citation to the Clerk's Papers to which the statement is attributed, or as argument which should not be included in the Statement of the Case. Appellant's citations to Clerk's Papers are completely irrelevant throughout the Statement of the Case as well as the body of the brief and Respondent moves to strike those portions of the Statement of the Case not supported by appropriate citation to the record. It appears as if all citations are to the incorrect pleadings and records of the trial court. This causes confusion of the record on appeal and makes preparation of the respondent's brief extremely difficult.

Respondent further objects more specifically to the following portions of the Statement of the Case as either not being supported by the

citation to the Clerk's Papers to which the statement is attributed, or as argument which should not be included in the Statement of the Case.

1. *Objection, Brief of Appellant, Page* 4.

On page 4 of the Brief of Appellant, the following statement is made:

> "The hearing on September 5, 2015 was expected to be solely on the GAL's motion."

Presumably the stated date should have been 2013 and this statement is merely argument, not in any way factual and should be stricken. The statement presents the expectations of the parties without any relevant citation to the record. Respondent asks the Court to disregard the sections of the Brief of Appellant, pursuant to RAP 10.7, which appear to be misidentified by the Appellant and unsupported by appropriate citation to the record.

2. *Objection, Brief of Appellant, Page* 5.

On page 5 of the Brief of Appellant, the following statement is made:

> "At the end of the year, Judge Godfrey then recused himself from all matters involving this counsel. RP I 255."

The citation to the report of proceedings does not support the statement of the case, but rather cites a comment made by legal counsel for the Appellant and the Respondent requests this portion be stricken from the Statement of the Case.

Respondent Mr. Beardslee provides the following counterstatement of the case:

On or about January 3, 2013 the trial court entered Findings of Fact/Conclusions of Law and Decree of Dissolution of Marriage for the parties. CP 10-29. The Decree incorporated the final parenting plan entered on August 24, 2012. CP 1-9. Mr. Beardslee filed a Motion and Declaration for an Order to Show Cause re Contempt on May 2, 2013. CP 30-33. At the motion hearing held on May 13, 2013 Ms. Beardslee also filed a Motion and Declaration for and Order to Show Cause re Contempt. CP 34-36. At the May 13, 2013 hearing both parties denied contempt and the court ordered the matter to be set before Judge Godfrey. CP 37. The contempt matter was not immediately set for trial as the court considered hearings regarding protection orders between the parties in early June and the parties were directed to set review hearings after said date. CP 039. On August 16, 2013 the Guardian ad Litem moved the court to schedule a review hearing. CP 38-39. The Guardian ad Litem's

motion for review hearing was heard on August 26, 2013 and an order under all three cause numbers set a testimonial hearing before Judge Godfrey on September 5, 2013. CP 40. The order had initially contemplated separating other matters from the hearing, however this provision was removed from the order, initialed by legal counsel for each of the parties and by agreement all matters were scheduled for testimonial hearing on September 5, 2013. CP 40. The court held testimonial hearings on September 5, 2013 and September 6, 2013 and made oral rulings as to the contempt actions filed by each of the parties as well as to the protections orders. CP 46 and RP I 239-257. Ms. Beardslee was found to be in contempt of multiple areas of the orders as alleged by Mr. Beardslee and the court found Mr. Beardslee was not in contempt. RP I 248. The parties agreed to submit affidavits of argument and to offer oral argument to have Judge McCauley enter the purging conditions and final orders on show cause re contempt. CP 104. The court considered written argument and oral argument relating to purging conditions before Judge McCauley who then entered Order on Show Cause re Contempt and Judgment. CP 141-146. The Appellant's Statement of the Case should be rejected in its entirety as not being supported by appropriate citations to the record.

II. QUESTIONS PRESENTED

1. Whether the trial court erred by hearing the pending contempt motions, where both parties were ordered to set the hearings for trial and had the same amount of notice? (Ms. Beardslee's Assignment of Error No. 1)
2. Whether the trial court erred in finding bad faith of the mother during contempt proceedings? (Ms. Beardslee's Assignment of Error No. 2.)
3. Whether the trial court erred in its finding contempt for Ms. Beardslee's failure to cooperate to refinance or modify the home mortgage to remove her name, when there was evidence she refused to timely sign the necessary documents and said evidence was sufficient to support the trial court's findings? (Ms. Beardslee's Assignment of Error No. 3.)
4. Whether the court abused its contempt powers by sanctioning Ms. Beardslee with an award of attorney fees and finding Ms. Beardslee caused her own harm and undermined the court orders by her contemptuous acts (Ms. Beardslee's Assignment of Error Nos. 3-5., inclusively)

5. Whether the court abused its contempt powers by ordering no interest due on an equalization transfer payment, where Ms. Beardslee's contemptuous acts caused any delay in payments? (Ms. Beardslee's Assignments of Error Nos. 3-6, inclusively.)
6. Whether the evidence was sufficient to support a finding of contempt for Ms. Beardslee's failure to pay the debts owed to Alaska USA Federal Credit Union? (Ms. Beardslee's Assignment of Error No. 7.)
7. If the parties agree to allow a different judge to consider the record and order purging conditions, may the party then avoid the conditions of purging by appealing the court's order? (Ms. Beardslee's Assignment of Error Nos. 1-7, inclusively.)
8. Whether Mr. Beardslee on appeal is entitled to attorney fees and costs?

III. STANDARD OF REVIEW

Appellant argues for the review of this case by a de novo standard of review as to the application or interpretation of the law. Ms. Beardslee fails to specifically identify the misapplication of law or interpretation, but rather attempts to seek review of factual findings which rest almost entirely on credibility issues. The customary standard of appellate review of fact determinations by a trial court is the "substantial evidence" rule.

See Thorndike V. Hesperian Orchards. Inc. 54 Wn.2d 570, 343 P.2d 183 (1959); Nichols Hills Bank v. McCool, 104 Wn.2d 78, 82, 701 P.2d 1114 (1985) (defining substantial evidence as evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise). In Peeples v. Port of Bellingham. 93 Wn.2d 766, 613 P.2d 1128 (1980), this Court explained that the rule in Thorndike is:

> "based upon the theory that there is a conflict in the testimony and that the trial court, having the witnesses before it, is in better position to arrive at the truth than is the appellate court."

93 Wn.2d at 772 (quoting Shultes v. Halpin. 33 Wn.2d 294, 306, 205 P.2d 1201 (1949).

De novo review is only appropriate where credibility is not an issue and the review is of the trial court's interpretation and application of a statute to undisputed facts. In the case at hand Ms. Beardslee's credibility is questionable and nearly all facts were disputed. CP 51, Lns. 13-15.

An appellate court reviews a trial court's decision in a contempt proceeding for an abuse of discretion. In re Estates of Smaldino, 151 Wn. App. 356, 364, 212 P.3d 579 (2009), review denied, 168 Wn.2d 1033, 230 P.3d 1061 (2010); In re Marriage of James, 79 Wn. App. 436, 439-40, 903 P.2d 470 (1995). A trial court abuses its discretion when its decision is

"manifestly unreasonable or based upon untenable grounds or reasons." State v. Brown, 132 Wn.2d 529, 569, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S.Ct. 1192, 140 L.Ed.2d 322 (1998). A trial court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

An appellate court reviews a trial court's challenged factual findings regarding contempt for substantial evidence. In re Marriage of Rideout, 150 Wn.2d 337, 351, 77 P.3d 1174 (2003). "Substantial evidence exists if a rational, fair-minded person would be convinced by it." In re Estate of Palmer, 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008). If substantial evidence supports the factual finding, "it does not matter that other evidence may contradict it." Burrill v. Burrill, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), review denied, 149 Wn.2d 1007, 67 P.3d 1096 (2003). This is so because appellate courts do not weigh conflicting evidence and credibility determinations "are not subject to review." Id. Finally, unchallenged factual findings are verities on appeal. See Young v. Young, 164 Wn.2d 477,482 n.2, 191 P.3d 1258 (2008).

Deference should be given to both the trial court's decision on contempt, and granting any sanctions against Ms. Beardslee. A trial court's decision on family law contempt motions is reviewed for substantial evidence. Rideout, 150 Wn.2d at 351-352, 77 P.3d 1174 (2003). A trial court's evidentiary rulings are reviewed for an abuse of discretion. State v. Williams, 137 Wn. App. 736, 154 P.3d 322 (2007). Similarly, the abuse of discretion standard applies to trial court decisions to impose sanctions. Stiles v. Kearney, 168 Wn. App. 250, 277 P.3d 9 (2012).

Speaking generally about dissolution cases, the Washington Supreme Court observed:

> "Trial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court."

In re Marriage of Landry, 103 Wn.2d 807, 809, 699 P. 2d 214 (1985).

Since the credibility of Ms. Beardslee is highly questionable throughout the proceedings and the factual issues were disputed at nearly every turn of litigation, this court should not apply the de novo standard of review. The court analyzed every document admitted into evidence. CP

60, Lns. 9-13. The court considered the demeanor and credibility of the witnesses and parties before finding contempt Ms. Beardslee to be in contempt. CP 50 Ln. 22 – CP 51 Ln. 9.

IV. ARGUMENT

1. Where the Trial Court ordered the parties to a testimonial trial regarding contempt and the parties entered an agreed written order to the hearing dates the court did not violate Ms. Beardslee's due process rights by irregularity of the proceedings. (Re Ms. Beardslee's Assignment of Error Nos. 1-2.)

At the May 13, 2013 hearing both parties denied contempt and the court ordered the matter to be set before Judge Godfrey. CP 37. The contempt matter was not immediately set for trial as the court considered hearings regarding protection orders between the parties in early June 2013 and the parties were directed to set review hearings after said date. CP 39. On August 16, 2013 the Guardian ad Litem moved the court to schedule a review hearing. CP 38-39. The Guardian ad Litem's motion for review hearing was heard on August 26, 2013 and an order under all three cause numbers set a testimonial hearing before Judge Godfrey on September 5, 2013. CP 40. The order had initially contemplated separating other matters from the hearing, however this provision was removed from the order, initialed by legal counsel for each of the parties and by agreement all matters were scheduled for testimonial hearing on

September 5, 2013. CP 40. The court held testimonial hearings on September 5, 2013 and the parties entered another agreed order on September 5, 2013 that continued the trial to conclude the following day (September 6, 2013) at 3:30 p.m. Both trial dates were held pursuant to the agreement of the parties and written orders of the court.

Appellant alleges the trial court erred because this was an irregularity of proceedings. Appellant cites only to the opening statements of the counsel to define the scope of the hearing, rather than the written orders of the court, which are unambiguous in this regard. There is nothing irregular about these proceedings. It should also be noted that Ms. Beardslee complains of her lack of ability to call witnesses or prepare for testimony or to present her case, however Mr. Beardslee received no more or less time to prepare for the same. No prejudiced occurred to either party.

2. The trial court may exercise its contempt powers and sua sponte make findings of contempt based upon the testimony and evidence presented at trial, where Mr. Beardslee's motion and declaration for an order to show cause specifically requests sanctions to include make up residential time and Ms. Beardslee was actively withholding visitation with Mr. Beardslee in bad faith. (Re Beardslee's Assignment of Error No. 1-2.)

Any exercise of the contempt power, whether it be to punish or to coerce, must comport with due process of law. To help identify what

procedural safeguards must be employed to satisfy due process, a distinction has been drawn between "direct" and "indirect" contemptuous behavior. Direct contempt is based on acts committed in the court's immediate presence. This means that the judge has personal knowledge of all the essential elements of the offense and is in a position to evaluate the circumstances which evoked the contemptuous conduct. Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968); In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948); Cooke v. United States, 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767 (1925). An indirect contempt is based on acts committed outside the presence of the court. In the case at hand, the trial court found Ms. Beardslee was actively withholding visitation and had changed daycare providers in violation of the parenting plan. CP 142-143. The order on show cause re contempt at paragraph 2.7 (CP 143) incorporates Judge Godfreys oral ruling by reference, which is found at RP I, 239-253.

Mr. Beardslee's Motion and Declaration for an Order to Show Cause re Contempt under paragraph 1.3, sought sanctions to include make-up residential time. CP 31, Lns. 3-5. The court considered all of the evidence at trial, the testimony and credibility of the parties and witnesses and found Ms. Beardslee had withheld visitation from Mr.

Beardslee for protracted periods of time and otherwise forced visitation changes outside of and in violation of the parenting plan. CP 142.

The court appropriately considered the sanctions requested by Mr. Beardslee and the findings of the trial court are verities on appeal. Ms. Beardslee does not allege a lack of evidence to support these findings.

3. The trial court did not abuse its discretion by finding Ms. Beardslee in contempt of the decree for failing to pay the debt owed on a vehicle where she was ordered to pay the associated debt and a preponderance of the evidence shows she failed to pay the debt or to hold Mr. Beardslee harmless. (Re Ms. Beardslee's Assignment of Error No. 1 and 7.)

Ms. Beardslee claims to have lacked the ability to pay this debt, however failed to provide evidence to support her position. The trial court found Ms. Beardslee failed to pay the debt owed to Alaska USA Federal Credit Union; that she had the ability to do so; and her contempt caused harm to Mr. Beardslee. CP 141-146 and RP I 248, Lns 1-4.

As mentioned supra, an appellate court reviews a trial court's challenged factual findings regarding contempt for substantial evidence. In re Marriage of Rideout, 150 Wn.2d 337, 351, 77 P.3d 1174 (2003). "Substantial evidence exists if a rational, fair-minded person would be convinced by it." In re Estate of Palmer, 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008). If substantial evidence supports the factual finding, "it does not matter that other evidence may contradict it." Burrill v. Burrill,

113 Wn. App. 863, 868, 56 P.3d 993 (2002), review denied, 149 Wn.2d 1007, 67 P.3d 1096 (2003). This is so because appellate courts do not weigh conflicting evidence and credibility determinations "are not subject to review." Id. Finally, unchallenged factual findings are verities on appeal. See Young v. Young, 164 Wn.2d 477,482 n.2, 191 P.3d 1258 (2008). There is substantial evidence here that the debt was not paid, but also that Ms. Beardslee had the ability to comply with the orders. Ms. Beardslee testified that she bought a new car, made all of the payments on the new car timely and intentionally failed to continue to make the payments for the car she decided to return to Alaska USA Federal Credit Union. RP I 47. Ms. Beardslee offered her testimony and evidence that she entered into a payment plan after failing to make payments to the lender and eventually returning the vehicle to repossession by the credit union. CP 77. She further testified that she was making all of the payments on her new car, thereby showing she had the ability to comply with the court orders but was not willing to do so. RP I 48.

4. The trial court did not abuse its discretion by finding Ms. Beardslee in contempt of the decree for failing to timely sign Modification/ Refinance/ Assumption documents to remove her name from the mortgage when overwhelming evidence was provided that she simply had to place her signature upon a piece of paper presented to her in order to do so and yet she refused until the delay made the process fail. (Re Beardslee's Assignment of Error Nos.1,2,3,4,5,6.)

This contempt was based upon Ms. Beardslee's refusal to timely sign documents to remove her name from the loan for a loan modification. The Decree under section 3.15 (CP 24) required Ms. Beardslee to cooperate to assist Mr. Beardslee in any refinancing of the mortgage on the home and went further to state consequences of his failure to do so on the following page (CP 25). The evidence is clear that Ms. Beardslee was presented with a "Relationship Letter" from Bank of America, that specifically stated on it that "This letter is to verify that I am aware that a Qualifying Assumption to allow removal of my name from the above loan is in process." Trial Court Exhibit 7, CP88. Ms. Beardslee testified that she refused to sign the document or to return it prior to March 13, 2013. There is substantial evidence that the letter was presented to Ms. Beardslee and that she refused to sign. Trial Exhibit 22. The Decree set forth a motive for Ms. Beardslee to undermine the assumption so as to require Mr. Beardslee to pay her an equalization payment of more than $12,500.00. CP 24. In order to comply with this provision of the Decree

Ms. Beardslee simply needed to timely sign the document and was clearly on notice that her failure to do so would inhibit the closing of the qualified assumption of the mortgage. Ms. Beardslee on appeal states she should be excused since she faxed a signature to Mr. Beardslee's legal counsel 45 minutes before an arbitrary deadline. Mr. Beardslee was not able to assume the loan due to the delay in getting signatures back to the bank. RP I, 137 Lns. 4- 17.

Appellant alleges on appeal that Mr. Beardslee was telling a lie and playing a shell game in order to evade the payment due to Ms. Beardslee. Brief of Appellant Pg. 21. Appellant further identifies Exhibit 7 and suggests that Ms. Beardslee's name was never going to be removed from the loan due to a Qualifying Assumption, when this flies in the face of the evidence which states in the relationship letter that "This letter is to verify that I am aware that a Qualifying Assumption to allow removal of my name from the above loan is in process." Trial Court Exhibit 7. Ms. Beardslee calls her husband a liar at the trial court level and continues to argue on appeal that the document does not speak for itself. The evidence is more than enough to satisfy the burden of proof at the trial level and to satisfy the substantial evidence necessary for the court to support its finding of contempt. Ms. Beardslee refers in her appellate brief to notes made by a person at the Bank of America who did not testify. The court

noted that no person from the bank testified and the court is given great deference to the weight the trial court assigned to the evidence presented at trial. The hearsay statements found in Bank of America documents were surely given little weight at trial. The fact that Appellant relies upon a monthly statement with her name on the mailing block as the best evidence that she remains responsible for a mortgage payment is telling in itself.

Finally Appellant in her Brief at Page 23 relies upon inquiries Judge McCauley made to Mr. Beardslee's counsel, as if this colloquy is evidence from trial. This attempt to convince the Appellate Court to weigh such evidence and make factual findings on such far-reaching assumptions violates the sanctity of this court and should be considered to have been brought in bad faith. Perhaps so much time passed between September 6, 2013 (the trial date) and July 31, 2014 (citation from Appellant RPII 41.) that it was lost on the litigants that the trial had been held 10 months prior to the court's inquiry of Mr. Beardslee's counsel.

5. The trial court did not abuse its contempt power by providing purging and sanctions consistent with the findings of contempt and the parties agreed to allow Judge McCauley to consider written and oral argument to determine the terms of purging and sanctions. (Re Ms. Beardslee's Assignment of Error Nos. 1-7 inclusive.)

The order under appeal is actually found at CP 141-146. Appellant argues the remedy for contempt related to the failure to assist with removal of the loan from Ms. Beardslee's name is punitive in nature. Respondent submits this is not true. Had there been no contempt, the trial court found Ms. Beardslee would have her name removed from the mortgage and Mr. Beardslee would not be required to make an equalization transfer payment pursuant to the stated terms of the Decree.

Civil contempt looks to remedy by coercing an action and compelling compliance with an order or judgment by requiring performance of some act by the contemnor. RCW 7.21.010, RCW 7.21.020. The court essentially extended the length of time Mr. Beardslee is allowed to remove Ms. Beardslee's name from the mortgage obligation, due to the contempt of Ms. Beardslee. The Order On Show Cause re Contempt allows Ms. Beardslee to purge her contempt by cooperating to assist Mr. Beardslee in any refinancing or other restructuring of the mortgage necessary to remove her name from the obligation. CP145. In the event she purges then her name will be removed from the mortgage, which will effectuate the purpose of the underlying Decree before she

violated the order by her contemptuous acts. A court may order a party to perform an act to effectuate the court's resolution of a dispute. In re the Marriage of Peacock, 54 Wash.App. at 17, 771 P.2d 767. RCW 7.21.010 et seq., which governs civil contempt proceedings, provides that the court may impose remedial sanctions including "[a]n order designed to ensure compliance with a prior order of the court." RCW 7.21.030(2)(c). Coercive sanctions imposed for contempt are within the sound discretion of the trial court and will not be disturbed absent abuse of that discretion. In re Marriage of Mathews (1993) 70 Wash.App. 116, 853 P.2d 462, review denied 122 Wash.2d 1021, 863 P.2d 1353.

The court ordered Ms. Beardslee to sign the documents necessary to effectuate the underlying Decree and this coercive sanction should not be disturbed as the trial court did not abuse its discretion.

5. Attorney Fees: Mr. Beardslee should not be ordered to pay any attorney fees to Ms. Beardslee and Ms. Beardslee should be ordered to pay all Mr. Beardslee's attorneys fees at trial and on appeal.

Only certain errors may be raised for the first time on appeal. RAP 2.5(a). Ms. Beardslee did not request attorney fees at the trial court level for the wrongful pursuit of contempt and now attempts to seek this remedy for the first time. The trial court here awarded Mr. Beardslee reasonable trial attorney fees which are non-discretionary and required under RCW

26.09.160(2). Here, the trial court found that Ms. Beardslee was in contempt of its parenting plan among other contempt findings and awarded Mr. Beardslee attorney fees and costs necessary to obtain Ms. Beardslee's compliance with the order. Washington state law requires that the trial court order a party in contempt to pay all court costs and reasonable attorney fees of the moving party in a proceeding to enforce compliance with a court-ordered parenting plan. RCW 26.09.160(2)(b)(ii). See In re Parentage of Schroder, 106 Wash. App. 343, 353-54, 22 P.3d 1280 (2001).

RAP 18.9(a) authorizes this Court to award Mr. Beardslee the fees he incurred to respond to this appeal. An appeal is frivolous "when there are no debatable issues on which reasonable minds can differ, when the appeal is so devoid of merit that there is no reasonable possibility of reversal, or when the appellant fails to address the basis of the lower court's decision." In re Settlement/Guardianship of AGM, 154 Wn. App. 58, 83, 223 P.3d 1276 (2010).

This appeal fits that description. Ms. Beardslee offers no explanation or serious debate that the evidence is not sufficient to support the multiple findings of contempt, but rather argues she deliberately failed to sign documents as ordered and rather wishes to argue the factual circumstances to a higher court. She in no way addresses the evidence

that speaks for itself and ignores that she brought contempt action against Mr. Beardslee for a mere $18.50 he was alleged to have not paid. The court considered her evidence and dismissed the contempt action she brought against Mr. Beardslee. This petty litigation and her far-reaching allegations have cost Mr. Beardslee dearly. Instead of addressing the basis of the decisions of the trial court, Ms. Beardslee merely repeats the arguments she lost below, relying on evidence the Superior Court has already weighed and that this Court should not weigh again. She focuses on matters irrelevant to the ultimate issue, while misconstruing the Superior Court's rulings and assigning irrational weight to certain evidence already carefully considered by the trial court.

This conscious disregard of the applicable legal standard and its relation to the evidence presented at trial qualifies this appeal as frivolous. See Millers Cas. Ins. Co. of Texas v. Briggs, 100 Wn.2d 9, 15, 665 P.2d 887 (1983) (awarding fees under RAP 18.9(a) where the law was clear, appellant failed to cite contrary authority and its circuitous arguments ignored the facts in the record); Mahoney v. Shinpoch, 107 Wn.2d 679, 692, 732 P.2d 510 (1987) (awarding fees where appellant's arguments were belied by the record and failed to address the basis of the trial court's decision); Andrus v. State Dept. of Transportation, 128 Wn. App. 895, 900, 117 P.3d 1152 (2005), review denied, 157 Wn.2d 1005, 136 P.3d 759

(2006) (awarding fees where appellant "asserted arguments that lack any support in the record or are precluded by well-established and binding precedent that he does not distinguish."); In re the Settlement/Guardianship of AGM, 154 Wn. App. at 83-87 (awarding fees where appellant's challenge to matter within superior court's discretion lacked factual and legal support, and failed to address reasons for superior court's decision). Ms. Beardslee failed to properly identify even one citation to the trial record in her Appellate Brief.

Ms. Beardslee cannot show the superior court abused its discretion. Rather, the record shows the trial court considered the evidence and applied the correct legal standard. She offers no reasonable basis to conclude otherwise. Therefore, Mr. Beardslee is entitled to recover fees on appeal. AGM, 154 Wn. App. at 86-87; see also Johnson v. Jones, 91 Wn. App. 127, 138. 955 P.2d 826 (1998) (awarding fees where "there was no reasonable basis to argue that the trial court abused its discretion[.]")

Mr. Beardslee should not be required to pay any attorney fees or costs for Ms. Beardslee and she should be required to pay Mr. Beardslee's costs of appeal related to the contempt proceedings. The court should order Ms. Beardslee pursuant to RCW 26.09.140 and RCW 26.09.160 (ii) to pay all of Mr. Beardslee's attorney's fees and costs on appeal. When the trial court finds a parent in contempt of an order pursuant to RCW

26.09.160, the court must order the noncomplying party to pay to the moving party "all court costs and reasonable attorney fees incurred as a result of the noncompliance" RCW 26.09.160(2)(b)(ii).

V. CONCLUSION

This case was initiated by Mr. Beardslee filing a Motion and Declaration for an Order to Show Cause re Contempt. The case proceeded to trial by agreement of the parties and written court order. The trial court made findings supported by the record and eventually entered an Order on Show Cause re Contempt. Ms. Beardslee was found to be in contempt on multiple grounds. Each independent ground was identified in the record and the parties agreed to argue in writing and orally before Judge McCauley who entered the conditions of contempt and sanctions.

There is substantial evidence enough as to persuade a fair-minded person of the truth of the declared premise. The trial court carefully reviewed each item admitted in to evidence as well as considered the credibility of the parties and witnesses. Since substantial evidence supports the factual finding it does not matter that other evidence may contradict it; however Ms. Beardslee continues to split hairs in an effort to persuade this court that the evidence should be reweighed and reconsidered. Ms. Beardslee

frivolously brought this appeal and utterly failed to provide any relevant citation to the trial court record.

Mr. Beardslee should be awarded attorney's fees and costs pursuant to statute and court rule cited above.

Dated: August 28, 2015.

Respectfully Submitted,

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CERTIFICATE OF MAILING

I certify that on August 28, 2015, I mailed a copy of the foregoing Brief of Respondent, by placing the same in the United States Postal Service, postage prepaid, to:

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PARKER & WINKELMAN LAW OFFICE

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Comments:

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